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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In the patent application of

Hall et al.

Application No. 09/172,577

Filing Date 10/13/1998

For INERT GAS BLANKET FOR PROTECTION FROM OXIDATION

Transmittal of Declaration to the Board

On appeal from

Group Art Unit 3682  
Examiner Chong H. Kim  
Supervisory Examiner David A. Bucci

COPY OF PAPERS  
ORIGINALLY FILED

Commissioner for Patents  
Washington, D.C. 20231:

I certify that this correspondence is deposited with the U.S. Postal Service as postage-prepaid, first class mail, addressed to the Office address indicated above on August 23, 2002 A.D.

Christopher John Rudy: Christopher John Rudy 23 AUG 2002.

Submitted herewith for prompt and favorable consideration by the Board is the original Declaration with Good Reason for Entry with Further New Art, executed by the inventors on Aug. 2, 2002.

Dr. Hall has indicated that the CleanTech article provided with the declaration is not applicable to the case. His note to the undersigned which accompanied the declaration to returned for filing (and received on even date hereto) is reproduced below.

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GROUP 3600

CHRIS- THE CLEANTECH  
ARTICLE IS NOT  
APPLICABLE TO THE CASE -  
IT IS ABOUT THE "SULZER"  
HIP JOINT IMPLANTS - THAT  
HAD TO BE REMOVED DUE TO  
OILY RESIDUE - THIS COST  
SULZER \$750,000,000!  
Rudy

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GROUP 3600

Dated: Aug. 23, 2002 A.D.

Encl

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We, Richard H. Hall and Theodore W. Selby, state and declare:

We are the named inventors of this application.

Attached hereto are copies of LUBE REPORT, Vol. 2, Iss. 9, Feb. 27, 2002, "Toyota to cover Oil Gelation Damage"; CleanTech, July/August 2002, page 6, "Prognosis Clean"; LUBRICANTS WORLD, March 2002, page 6, "Toyota Already Giving Oils a Boost?" and TOYOTA, April 2002, letter to Toyota Dealer. The articles form an introduction, as it were, to the letter, which most completely disposes of the Examiners' argument that extended oil changes are viable with other technology than that of the present claimed invention and, in particular, as in our claims 51 and 52.

The present information could not have been filed earlier since, although the foundation articles were published earlier this year, they did not come to our attention until later in the year, during late July, and the letter, which caps the remaining art, was only obtained on or about July 24-5, 2002. The articles were forwarded to our attorney on this July 23rd, the letter on this July 25th. Most strongly, it rebuts the Examiners' case and supports the patentability of the claims, to especially include the claims 51 and 52. Therefore, this declaration may be entered and considered by the Board in the present appeal.

All statements made herein of my own knowledge are true, and all statements made herein on information and belief are believed to be true. And, these statements were made with the knowledge that willful false statements and the like so made are punishable by fine and/or imprisonment under 18 USC 1001, and may jeopardize the validity of this application of any patent issuing whereon.

  
Richard H. HALL

  
Theodore W. SELBY

Dated: Aug 6 2002

Dated: 020806

# TOYOTA

Toyota Motor Sales, U.S.A., Inc.  
7000 S. Western Avenue  
P.O. Box 2722  
Torrance, CA 90509-2722

April, 2002

Dear Toyota Dealer,

As you know, in February, 2002, Toyota announced a Special Policy Adjustment (SPA) to cover repairs on 5S-FE four cylinder and 1MZ-FE six cylinder engines related to engine oil gelling for customers who have made a reasonable effort to maintain their vehicles. As our owner notifications continue, we have been able to confirm that the number of gel related cases is very small. We have reimbursed customers who previously paid for repairs and paid for repairs for new occurrences under the terms of the SPA. Most customers have confirmed that maintenance was not performed as recommended.

As we move forward with this policy adjustment, our first concern is taking care of customers. For the majority of customers who have not had or will not have a problem in the future, we want to offer the assurance they will be protected. For the customers who are seeking assistance, we want to satisfy their requests. In the interest of customer satisfaction, Toyota is enhancing the terms of the SPA.

*Effective immediately, Toyota announces a Customer Support Program which will cover the cost of repairs on 5S-FE and 1MZ-FE engines necessary due to oil gelling for 8 years, unlimited miles. This action removes the one-year limit on coverage that was originally announced in the SPA. In addition, Toyota will cover reasonable incidental expenses for customers like towing and rental car expense as outlined in our Toyota Transportation Assistance Program. Also, to help you insure the highest level of customer satisfaction, we will reimburse you for all parts, labor, fluids and incidental expenses associated with the repair of affected vehicles. We will also add the 2002 model year vehicles with 1MZ-FE engines to the list of eligible vehicles. The remainder of the SPA instructions will remain in effect like vehicle eligibility and repair guidelines as well as confirming a reasonable maintenance effort. Additionally, the requirement for prior authorization from your Region/PD representative will remain in effect. Customers seeking reimbursement for prior gel related repairs should be instructed to contact Toyota at 1-888-802-9436.*

Toyota has made and will continue to make improvements in engine technology to deal with all driving conditions. No vehicle can withstand a pattern of delayed maintenance and we request your assistance in encouraging your customers to meet the requirements of the maintenance schedules.

Owner notifications will be mailed shortly and we ask you do everything you can to serve the needs of our customers and assure them that they are valued customers.

Sincerely,

Toyota Motor Sales, U.S.A. Inc.

## COMPANY NEWS

### CDF Purchases Uniroyal Drum Pal Assets

CDF Corp., a leading manufacturer of liners and covers for industrial pails, drums, and intermediate bulk containers (IBCs), has purchased the assets of the Uniroyal Drum Pal drum cover business. The drum lids are meant to protect both open- and tight-head steel drum tops from weather damage during outdoor storage. "The reusable drum cover is a strong compliment to our existing product line and will help save our customers time and money," CDF President Joe Sullivan said.

CDF Corp. manufactures vacuum -formed, heat-sealed, and blow-molded plastic liners and inserts for containers holding from 2 gallons to 330 gallons of liquid product. CDF is headquartered in Plymouth, MA.

### Prolong Finalizes Acquisition of Pro-Long EPL

Prolong International Corp., a consumer products holding company and parent of Prolong Super Lubricants Inc., has finalized the acquisition of EPL Pro-Long Inc. This purchase includes patented lubricant technology, product formulations, the Prolong trademarks, and related assets. Litigation by a group of shareholders holding less than 2% of the common stock delayed the final distribution of shares.

## ADDITIVES

### New ACC Policy Requires Members to Ensure Security

In light of the Sept. 11 terrorist attacks on the United States and continuing fears about the security of chemical process plants and similar facilities, the American Chemistry Council (ACC) has adopted a new policy requiring credible, independent third parties to verify that chemical manufacturers have taken steps to ensure the security of their facilities. ACC has announced that by June it will have in place an enhancement to its existing Responsible Care program that will consist of management prac-

tices to further safeguard sites from potential terrorist attacks, build closer relationships with law enforcement, and help ensure the protection of chemical facilities.

The new security measures adopted by ACC will require members to screen their facilities to identify those that may require the most immediate attention, assess potential security vulnerabilities, identify and undertake specific steps to improve security, and utilize independent third parties to verify that the security improvements have been implemented.

The new Security Code will be released in June, and abiding by the program will be a condition of continuing membership in ACC.

## AUTOMOTIVE

### Association Survey Gives Optimistic Aftermarket Numbers

According to the Automotive Aftermarket Industry Association (AAIA), the aftermarket is continuing to grow, despite the downturn in the U.S. economy. For 2001, the total aftermarket was \$173.2 billion, up \$7.9 billion (or 4.8%) over 2000. Sales of aftermarket lubricants made up almost \$14.8 billion of that total, up 8.9% from the year prior. The good news gets even better: The AAIA expects that aftermarket lube sales will increase again in 2002, to \$15.4 billion or 4.4%.

Also from the AAIA: The association's *Aftermarket Jobber Report* shows that while new-car dealers have lost roughly 25% of their service capacity (or 75,000 service bays) in the past 12 years, the independent auto aftermarket has added almost 200,000 service bays in the same period. According to the association, the number of quick lubes has held relatively steady for the last 6 years, with 5,800 in 1995, 5,600 in 1998, and 5,800 in 2001.

At the same time, another report, titled *The Aftermarket Consumer: Do-It Yourself or Do-It-for Me*, says that the percentage of U.S. households handling their own automotive maintenance and repair has held steady since 1994. However, the proportion of women doing their own work has grown from 27% to 34%.

### EPA Says Diesel Usage Will Rise

The Environmental Protection Agency (EPA) predicts as many as one in five new vehicles in the United States will be diesel powered by 2010, despite the tougher emissions standards coming online in 2004. Diesels are expected to power about half of new European cars by 2005.

### Toyota Already Giving Oils a Boost?

Last December, Toyota engineer John Shapinski told attendees of the ILMA/ICIS-LOR Base Oils & Petroleum Additives Conference - the Americas that the auto companies would "promote the use of GF-4 [oils] to the extent that the law allows."

Now Toyota is warning car owners of the dangers of not changing the oil as specified. The company is sending out notices to more than 3 million Toyota and Lexus vehicle owners warning them to follow the manufacturer's recommendations on the frequency of oil changes or run the risk of serious engine damage. This follows the automaker's attempts to reimburse an unknown number of vehicle owners who had to pay for repairs necessitated when their oils gelled, a phenomenon that is more likely as oils age.

## BASE OILS

### NPRA Survey Shows Drop in Lube Sales for 2001

The National Petrochemical & Refiners Association's (NPRA) most recent quarterly lube sales results show that for the second quar-

## INDUSTRY DATEBOOK

- |                    |                                                                                                                                                                                            |
|--------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>April 9</b>     | <b>API Detroit Advisory Panel Forum</b><br><b>Dearborn, MI</b><br><b>Information: (202) 682-8000</b>                                                                                       |
| <b>April 11-13</b> | <b>ILMA Mid-Year Meeting</b><br><b>Hilton Head Island, SC</b><br><b>Information: (703) 684-5574</b>                                                                                        |
| <b>April 13-16</b> | <b>2002 AOCA Convention &amp; Fast Lube Expo</b><br><b>Reno, NV</b><br><b>Information: (800) 331-0329;</b><br><b>(972) 458-9468</b>                                                        |
| <b>April 14-16</b> | <b>Association of Equipment Management</b><br><b>Professionals Management Conference</b><br><b>&amp; 20th Annual Meeting</b><br><b>Nashville, TN</b><br><b>Information: (970) 384-0510</b> |
| <b>May 19-23</b>   | <b>STLE Annual Meeting</b><br><b>Houston, TX</b><br><b>Information: (847) 825-5536</b>                                                                                                     |



## Prognosis Clean

In a time when travel budgets are the first on the hit list, industry trade shows, while far from booming, are still fairly well attended. People are picking and choosing more carefully where they go, but they seem to appreciate the value of seeing products, attending educational seminars, and, most importantly, meeting with their peers. And although companies aren't sending the "teams" they once did, they are sending qualified representatives to explore new opportunities.

To meet the needs of the limited budget many shows are co-locating and joining forces. For example at CleanTech 2002 it was formally announced that next year's show will be co-located with National Manufacturing Week in Chicago. And the recent Medical Design & Manufacturing show in New York City was combined with PLASTECH East, Atlantic Design & Manufacturing, and East Pack.

While it was encouraging to see several cleaning solution providers, such as Micro Care, AGA, Dow and Plasma Etch at the expo, I was surprised to discover that many designers and manufacturers of materials for medical device manufacturing were floating the cleaning responsibility down stream to their customers. For example, a manufacturer of drill bits and cutting devices used in making stethoscopes, did not consider the level of cleanliness his product could provide an issue; "It would be up to the stethoscope maker to worry about avoiding burrs or keeping the unit clean." And the makers of parts that went into a monitoring system said it was up to the builder to ensure cleanliness specs were met. Don't get me wrong, there are companies that view cleaning as a true priority. CYRO Industries for example, takes cleanliness to heart with its clean mold initiative to help produce visibly clean, transparent medical devices.

But is there a change simmering in the air? We've seen the phenomenon in other industries, where cleaning gets pushed back on the parts providers. With recent tales of failed hip replacements being cut out of patients, due to oil residue, I can't help but think that that the distributors are going to want to be sure of the cleanliness of their products, and may push some, if not all responsibility back onto the makers.

And now with recent government initiatives, such as the FDA planning to require that medical device manufacturers track post-market products, accountability is crucial. According to the FDA, "The purpose of this rule is to provide for the collection of useful data about devices that can reveal unforeseen adverse events or other information necessary to protect the public health." This indicates that the rule makers are taking a more than casual interest in what happens to medical devices once they leave your warehouse. Shouldn't you?

*Charlie Simpson*

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# CleanTech

For Cleaning Business Improvement

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LUBE REPORT

Subject: LUBE REPORT

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# LUBE REPORT

## Industry News from LUBES-n-GREASES

Wednesday, February 27, 2002

VOLUME 2 ISSUE 9

News Sponsored  
By:

### Toyota to Cover Oil Gelation Damage

While stressing that it is in no way at fault, Toyota Motor Sales USA has made a one-time offer to cover repair of customer vehicles damaged by engine oil gelation.

(Click here to view FULL STORY)

### Metallo Out at ILMA

The Independent Lubricant Manufacturers Association is looking for a new executive director after the abrupt departure last week of Michael C. Metallo.

(Click here to view FULL STORY)

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### SAE Retools Fall Meeting

SAE International has expanded the scope of its former Fall Fuels and Lubricants Meeting and Exhibition and renamed the event the Powertrain and Fluid Systems Conference and Exhibition.

(Click here to view FULL STORY)

### CONTACT US

E-MAIL COMMENTS  
TO:  
**Lube Report**  
**Editor**

### ISSUE ARCHIVE

February 20, 2002  
Vol. 2 Issue 8

(MORE)

### Ethyl Promotes Perry, Huang

Ethyl Corp. has promoted Newton A. Perry to the position of senior vice president of strategy, where he will be responsible for the company's long-term planning. Perry joined the Richmond, Va., additive company in 1969 and served most recently as senior vice president of antiknocks. Ethyl also named C.S. Warren Huang senior vice president of fuel additives. He has been employed by the company since 1980, most recently as vice president and managing director of Ethyl Asia Pacific Co.

### ConocoPhillips Picks Nokes

Conoco and Phillips Petroleum Co. named several senior level managers for the company to be formed by their proposed merger, including the head of downstream operations. Upon completion of the merger, expected in the second half of 2002, Jim W. Nokes will become ConocoPhillips' executive vice president of refining, marketing, supply and transportation. He now holds the same post at Conoco, where he has worked since 1970.

# LUBE REPORT

## Industry News from LUBES-n-GREASES

Wednesday, February 27, 2002

VOLUME 2 ISSUE 9

HOME

News Sponsored  
By:

### Toyota to Cover Oil Gelation Damage

By Tim Sullivan

Toyota Motor Sales USA has made a one-time offer to cover repair of customer vehicles that have been damaged by engine oil gelation.

Toyota emphasized that the action is based on a small number of cases and maintained that customers encountering gelation are not changing oil often enough for their driving habits.

Still, the company said it will pay for repairs as a "goodwill gesture." The offer is available for one year on a case-by-case basis to Toyota and Lexus owners able to show "reasonable evidence of regular engine maintenance."

Oil gelation occurs at cold temperatures when oil gels into a semi-solid glob and fails to lubricate engines. In an attempt to avoid the problem, engine oil formulas include pour-point depressants. API-certified engine oils are supposed to pass tests proving their pumpability at low temperatures.

But gelation still can occur, although researchers say the problem usually stems from oil degradation. Toyota said that failure to comply with recommended oil drain intervals is the primary problem, and that short-distance, stop-and-go driving and cold temperatures also contribute.

A Toyota USA spokeswoman said the company has received only a small number of gelation reports – less than 2,500 over a number of years. The company said it has yet to receive a report from a customer able to document compliance with recommended maintenance practices.

"We're not aware of any cases of oil gelling in properly maintained engines," said Bob Daly, group vice president and general manager Toyota Customer Services. "The vast majority of Toyota owners, and motorists in general, regularly maintain their vehicles and will never encounter this condition. But for some, busy schedules, budget considerations or misunderstanding of what constitutes 'normal' versus 'severe' driving conditions may result in neglecting their vehicle."

Spokeswoman Ming-jou Chen said some gelation complaints came from customers who did not follow recommended maintenance oil drain intervals because they did not realize their driving habits qualified as "severe."

Toyota and Lexus define severe to include traveling on unpaved, dusty roads, towing trailers or repeated trips of less than five miles in cold temperatures. They recommend oil change intervals of 5,000 miles or four months under severe conditions, 7,500 miles or six months under normal conditions.

Chen was unable to provide detailed analysis of Toyota's pool of gelation complaints.

HOME

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**Forward to a colleague**

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